IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 4035 OF 2004

IN

CRIMINAL APPEAL NO. 80 OF 2004

Siddeshwar Sitaram Kale .. Applicant

versus

The State of Maharashtra .. Respondents

...

Mr.P.P. Hudlikar with Mr.Ujwal R. Agandsurve for the applicant.

Mr.B.H. Mehta, APP for the State.

CORAM : V.M. KANADE, J

DATED : 23rd September 2004.

P.C:-

1. Heard the learned counsel appearing on behalf of the applicant and the learned APP for the State.

2. This is an application for bail preferred by

the applicant who is convicted by the trial Court for having committed an offence u/s.376 of the IPC and sentenced to suffer RI for 10 years.

3. The prosecution case is that the prosecutrix was a minor girl and the accused took her to a sugarcane field and committed rape on her. The complaint was lodged after a lapse of four days. The prosecution has relied on the evidence of the prosecutrix, her mother and other witnesses and also on the Chemical Analyser's report and the doctors evidence. PW no.3 Anna Sawant who is examined by the prosecution to prove the extract of gram panchayat register wherein her date of birth is entered as 21st June 1991 has admitted in his cross examination that the parents of the girl had not produced the birth certificate issued by the Gram panchayat or the hospital and therefore, the date of birth given by the parents was accepted. The trial Court has also observed that it is difficult to attach much importance to the date of birth given by PW no.3 Anna Sawant. PW no.7 Dr.Ranjeet Kelkar has stated in his examination in chief that he was not in a position to make any statement or give any opinion as to whether the prosecutrix was raped. He has also stated that

the forchutal tear could be caused in case of forceful insertion of any object in the vagina. He has further stated that from the X-ray photos, the radiologist had given an opinion that the age of the girl was between 14 to 15 years with a margin of about 3 years on either side.

4. The evidence of the prosecutrix also reveals that she had accompanied the accused in the sugarcane field and then there was no resistance at the time when the accused removed her clothes and his own clothes or during the act of sexual intercourse. From the evidence of this witness also, her conduct shows that she did not inform this fact to her parents for four days and thereafter, when her mother enquired she is said to have informed about the incident of rape. The Chemical Analyser’s report also does not indicate that the prosecution had taken proper care while sending the clothes to the Chemical Analyser and that the panch witnesses examined by the prosecution for proving the seizure of his cloths had turned hostile. Further, the Investigating Officer also did not state that the clothes were sealed when were have sent to the Chemical Analyser.

5. In the light of all this, in my view this is a fit case where the applicant is entitled to be released on bail. Another circumstance is that the accused is in jail since last two years and was not released on bail before trial. The applicant therefore, is entitled to be released on bail.

6. The applicant be released on bail in the sum of Rs.5,000/- with one or two sureties in like amount. The applicant shall not enter the jurisdiction of Pandharpur Taluka Police station for a period of one year from today. He shall report to Pandharpur Taluka Police station once in a fortnight.

7. Hearing of the appeal is expedited.

V.M.KANADE, J